IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 25395 of 1998

Between:

Smt. B. Lalithamma, Wife of Ratnakar, School Assistant,
Municipal Girls High School, Guntakal, residing at Guntakal,
Anantapur District.

..... PETITIONER

AND

1 The Municipal Commissioner, Guntakal Municipality, Anantapur District.
2 Smt. T. Lakshmi Devi, Wife of Yethrajulu, Secondary Grade Basic Trained Teacher, Municipal Girls High School, Guntakal, Anantapur District.
3 M. Venkataratnamma, Wife of Prabhakar Reddy, Secondary Grade Basic Trained Teacher, Municipal Grade High School, Guntakal, Anantapur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order, direction or a writ particularly one in the nature of a Writ of Mandamus declaring that the proceedings issued by the first respondent In ROC.No. 2536/96/02 dated 11-3-1997 as arbitrary, illegal and unsustainable and a consequential relief to declare that the petitioner is entitled to be placed above the respondents 2 & 3 in the final Seniority List of B.Ed Assistant working in Upper Primary Schools and Secondary Schools of the Guntakal Municipality as finalised by the first respondent in ROC.No.2536/96/C2, dated 11-3-1997. It is also prayed that (1) the order in ROC.No.1969/2000/C2 dated 15.9.2003 temporarily promoting the 3rd respondent as Principal ignoring the rights of the petitioner is arbitrary, illegal and is liable to be set aside, (2) to direct the 1st respondent not to regularize the said

order of temporary promotion of the 3rd respondent as Head Mistress of Dr.Sarvepalli Radha Krishna Municipal Boys High School, Guntakal pending disposal of the main Writ Petition and (3) to direct the 1st respondent not to fill up the vacancy of the post of Head Mistress of Sarojini Naidu Municipal Girls High School, Guntakal on regular basis till the disposal of the main Writ Petition.

PTO

Counsel for the Petitioner: MR.KOKA RAGHAVA RAO

Standing Counsel for Respondent No.1: Mr.NEWTON.

Counsel for the Respondent Nos.2 and 3: MR.P.VEERA REDDY

The Court made the following:

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ORAL ORDER: (per GB.J.)

The Writ Petition is filed assailing the order passed by A.P. Administrative Tribunal (for short Tribunal) in O.A.No.1792 of 1997, dated 15.4.1998.

2. The petitioner is the applicant before the Tribunal. She was appointed as B.Ed. Assistant on 18.2.1984. According to the petitioner though the unofficial respondents were appointed as S.G.B.T. Teachers, they were appointed as such subsequent to the appointment of the petitioner as B.Ed. Assistants. However, in 1985 when a seniority list was being prepared among the B.Ed. Assistants and the S.G.B.T. Teachers, the petitioner was figuring at serial No.4, whereas respondents 2 and 3 were figuring at serial Nos.45 and 47 respectively. While so, in 1997 the seniority list was altered and the petitioner was fixed at serial No.12 while the unofficial respondents were placed at serial Nos.8 and 9. Aggrieved by the said seniority list, the petitioner filed the above OA. The learned Tribunal dismissed the said OA holding that there is no merit in it. Against which the present Writ Petition has been filed.

3. Mr.Koka Raghava Rao, the learned counsel for the petitioner submits that the very reopening of the settled seniority itself is illegal and contrary to law. He submits that when the seniority list was circulated in 1985, though the objections were called for, the respondents 2 and 3 did not file any objections and therefore the said seniority list has become final and hence it is not appropriate for the authorities to reopen the settled seniority after a period of one decade. In support of his contention he relied upon a Division Bench Judgment of this Court reported in K.R.RAGHAVAN NAIR vs. UNION OF INDIA AND OTHERS[1].

4. It is the case of the unofficial respondents that they were appointed as S.G.B.T. Teachers. They acquired B.Ed. qualification while they are in service. The Government issued orders upgrading 1030 S.G. Basic Trained posts into B.Ed. Assistants, in G.O.Ms.No.629, Education (M) Department, dated 14.6.1977.

Accordingly the unofficial respondents were promoted as B.Ed. Assistants in pursuance of G.O.Ms.No.629, dated 14.6.1977 in 1979 itself and they are continued to work as B.Ed. Assistants only. It is also the case of the respondents that they have been repeatedly making representations to the authorities to change their seniority in view of their appointment as B.Ed. Assistants in 1979 by virtue of G.O.Ms.No.629, dated 14.6.1977. The Tribunal also referred this aspect and found in para 4 of its order, which is as follows:

> "Admittedly the posts were upgraded to that of B.Ed. Assistants in pursuance of G.O.Ms.No.629, Education, dated 14.6.1977. The unofficial respondents were appointed as B.Ed. Assistants by the Municipal Commissioner in his proceedings Roc.No.C1/5758/78, dated 24.3.1979 and they were also given the benefits under Automatic Advancement Scheme etc., duly taking their service in B.Ed. Assistant since 27.3.1979. The learned Standing Counsel submitted that the promotion given to respondents 2 and 3 was not entered in the Service Register by mistake and in the seniority list prepared in the year 1985 and on that score they cannot be declared as juniors to the applicant. Keeping the facts and circumstances of the case into consideration and in view of the appointment of the unofficial respondents as B.Ed. Assistants in the year 1979 itself, we are of the considered view that respondents 2 and 3 are senior to the applicant and the final seniority list published by the 1st respondent is not contrary to the Rules. There are no merits in the O.A. and the same is liable to be dismissed".

5. The Tribunal observed that by mistake the names of the respondents were not mentioned even though they were converted as B.Ed. Assistants by virtue of G.O.Ms.No.629, dated 14.6.1977 and on that score they should not be allowed to suffer the consequences. Since it is only an administrative omission, which is solely attributable to the lapses on the part of the Department, the seniority of the unofficial respondents, who are already appointed as B.Ed. Assistants, should be counted from the date of their appointment as B.Ed. Assistants, and therefore the order of the Tribunal is quite legal and valid.

6. It is true that in 1985 the seniority list was finalized, in which the petitioner was senior to the unofficial respondents. However, it was found that on account of mistake having been crept in, the seniority list was prepared on that basis, and on merits also the unofficial respondents are, in fact, seniors to the petitioner. Though the learned counsel for the petitioner submits that no representations were made, but as can be seen from the order of the Tribunal, the unofficial respondents did

submit the representations, but the matter was not disposed of for a quite long time and only in December, 1996 when the representations were made, they were considered and the mistake on the part of the administration was detected to be set right. In view of this order, even though there was considerable delay, yet we are not inclined to upset the seniority as fixed in 1996 as the unofficial respondents are entitled for such seniority taking into consideration their appointment as B.Ed. Assistants and the petitioner cannot be allowed to take advantage of the omissions on the part of the Department.

7. In the result, the Writ Petition is dismissed. No costs.

(G.BIKSHAPATHY, J.)

23rd February, 2005.

(P.S.NARAYANA, J.)

SSR

To

1. The Municipal Commissioner, Guntakal Municipality, Anantapur District.

2 The Registrar, A.P. Administrative Tribunal, Hyderabad.

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